APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 82-1218

United States of America,

Appellant,

v.

Jon Cary Maier,

Appellee.

Appeal from the United States District Court for the District of Minnesota.

Submitted: September 13, 1982

Filed: October 27, 1982

Before LAY, Chief Judge; BRIGHT and JOHN R. GIBSON, Circuit Judges.

BRIGHT, Circuit Judge.

The United States appeals from the grant of a motion by defendant-appellee Jon Cary Maier to suppress as evidence seven bales of marijuana and related materials seized by police during the search of the camper portion of a 1980 Chevrolet pickup truck and "topper" camper

unit. The grand jury charged Maier with possession with intent to distribute approximately 190 pounds of marijuana, in violation of 21 U.S.C. §841 (1976). Prior to trial, Maier moved to suppress the evidence on the grounds that it had been obtained by an unlawful search and seizure. A United States Magistrate recommended that the motion be granted. The district court adopted the magistrate's report in substance and entered an order of suppression. The Government appeals under 18 U.S.C. § 3731 (1976).

We reverse, and hold that the police discovered the marijuana while making a valid inventory of the contents of the vehicle, including the camper. Thus, the search and subsequent seizure of the items in question did not violate the defendant's rights under the fourth amendment.

I. *Background.*

At approximately 2:00 a.m., September 10, 1981, Minneapolis police officers Rognlie and Carey responded to a call to check a vehicle parked on a Minneapolis street. Upon arrival at the location of the vehicle, the officers found Maier asleep in the driver's seat of the pickup with his feet sticking out of the window on the driver's side of the truck. The truck was parked with its right front and right rear wheels on the sidewalk. In response to police questioning, Maier gave his name and date of birth, but stated that he carried no identification. The officers then ran a driver's license check and a warrant check, and learned that Maier had no warrants against him but that his driver's license had been suspended. Because of the license suspension, the police officers informed Maier he would not be allowed to drive the vehicle away, and that it

would be towed. The officers then took possession of the keys to the vehicle and directed Maier to depart on foot.

One of the officers then began to prepare an impound report while the other officer inspected the contents of the cab as part of "normal police procedure to inventory any valuable contents in the vehicle." The officer inspecting the cab, Officer Rognlie, observed a large leather bag in the front seat of the vehicle. At that time he called to Mr. Maier, who was about fifty-to-one hundred feet away, and inquired whether Maier owned the bag. Maier responded negatively. After Officer Rognlie moved the bag, he then found a second bag, which he described as a bank pouch, with a large number of $100 and $50 bills inside (a later count disclosed approximately $14,000 in currency). Officer Rognlie then ran after Maier and overtook him a block or so from the location of the truck. Rognlie later testified that when he caught up with Maier, he thought Maier was attempting to hide behind a wood fence. He asked Maier to whom the bag of money belonged, and Maier denied any knowledge of it. Maier stated that a friend, Mr. Wenzell, owned the truck but that Maier had been using it for the past five months. Rognlie then asked Maier to return with him to the truck.

The officers next proceeded to look into and unlock the rear "topper" of the camper portion of the truck. They observed several sleeping bags and a large sheet of plywood about eighteen inches above the floor that blocked further view of the camper floor. One of the officers testified that upon opening the "topper", he detected the smell of what he believed to be unburned marijuana, although he could not, in testimony, describe the smell or articulate why he identified the odor as that of maijuana. One of the

police officers then lowered the tailgate of the camper. Inside he saw a number of sealed opaque garbage bags visible under the plywood board. Officer Rognlie squeezed one of the garbage bags and felt its contents but did not open the bag.

The officers returned to their squad car and advised Maier that he was under arrest for "probable cause, narcotics." The police at the scene placed a radio call for a narcotics investigator. After his arrival, the investigator prepared an affidavit in support of an application for a search warrant based solely on the information supplied by the policeman first on the scene. The plice arranged to tow the truck to the police garage and there seized under the warrant approximately 190 pounds of marijuana located in the camper.

At the suppression hearing, Officer Rognlie testified that he had initiated the search of the pickup truck as an inventory search pursuant to normal police procedures used when impounding a vehicle. He testified further that he and his partner decided to impound the vehicle because Maier's driver's license had been suspended and no other person responsible for the vehicle was in the area. In addition, the prosecutor produced testimony from a police sergeant from the Minneapolis Police Department, who explained:

> Briefly, if a vehicle is found to be in violation and subject to tow, the vehicle will be searched in its entirety including any compartments or storage areas of the vehicle and towed. Failing to undertake such a search is a violation of department procedure and subjects are subject up to five days off without pay.

Finally, Officer Rognlie testified that he had opened the camper for self-protection, and to avoid the possibility of being shot by someone in the camper. Rognlie stated that he was aware that one week earlier a policeman had been shot by a man hiding in the back of a pickup truck.

In recommending that the motion to suppress be granted, the magistrate made findings, among others, that the fear for safety expressed by Officer Rognlie "was not reasonable in light of the circumstances," and further, that the officers' belief that they detected the smell of unburned marijuana was also not reasonable.

In adopting the magistrate's findings and opinion, the district court expressed the view that *South Dakota v. Opperman*, 428 U.S. 364 (1967), would permit the inventory search of the locked portion of a motor vehicle. Nevertheless, the district court believed that this court's opinion in *United States v. Wilson*, 636 F.2d 1161 (8th Cir. 1980), required a determination that police had made an unlawful search and that the unlawful search tainted the warrant. We disagree. Upon careful review of the record, we believe the facts here are quite different than those presented in *Wilson*, and justify approving the search under *Opperman*.

II. *Discussion.*

The issue in this case focuses on whether the police had a right to extend an inventory search into the locked camper portion of the pickup truck unit. The Government contends the inventory search exception to the warrant requirement as discussed in *South Dakota v. Opperman*,

supra, justified a cursory search of the truck unit including the locked portion of the camper.[1]

The Supreme Court in *Opperman* indicated that once a vehicle is seized and legitimately taken into police custody, the routine practice of securing and inventorying its contents is justified as serving three distinct needs:

> [T]he protection of the owner's property while it remains in police custody * * *; the protection of the police against claims or disputes over lost or stolen property * * *; and the protection of the police from potential danger * * *. [428 U.S. at 369.]

The search in *Opperman*, however, extended only to the interior and unlocked glove compartment of the car.

In *United States v. Wilson*, 636 F.2d 1161 (9th Cir. 1980), we held that a legitimate seizure does not automatically justify an unlimited search of an automobile, and that the search must still be reasonable in light of the facts and circumstances of the particular case. 636 F.2d at 1163. In *Wilson*, police arrested the defendant for committing certain traffic violations. Because he was a nonresident, the officers took Wilson to the police station to post an appearance bond. Although they later determined that Wilson had not been intoxicated, the officers testified that they had his car towed because they believed he was not capable of driving it himself. Before it was towed, the officers searched both the interior and

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[1]The Government in its brief argues that the camper was not locked and that the inventory search in question here extended to an unlocked portion of the vehicle. The magistrate's findings, as well as the evidence, however, militate against that assertion.

Notwithstanding the efforts of the Government to sustain the search on several invalid grounds, we are satisfied from our examination of the record that the police entered the locked camper while conducting an appropriate inventory search.

locked trunk of the car, where they found incriminating evidence.

This court held that under the circumstances, the warrantless entry by police into the trunk was unjusitified and unlawful. We stated that

> the search was unreasonable in light of the individual's greater expectation of privacy in the locked trunk of *his* automobile and *in view of the particular facts of this case.* [636 F.2d at 1163 (emphasis added).]

We also noted that

> [a]lthough an individual may not reasonably expect the same degree of privacy in a car trunk as in a home or office, an individual may justifiably have a greater expectation of privacy in the locked trunk than in the interior of his car. [636 F.2d at 1164.]

In *Wilson*, the owner of the car was present but given no opportunity to arrange for the safekeeping of his belongings, to consent to the search, or to relieve the police from liability. This court observed that the inventory search in *Wilson*, unlike the search in *Opperman*, was not "prompted by the presence in plain view of a number of valuables inside the car." 636 F.2d at 1165 (*citing United States v. Opperman, supra*, 428 U.S. at 375-76). We also held that the search itself was unnecessary because the police intended to retain control of Wilson's vehicle for only a short period of time until Wilson could post an appearance bond. 636 F.2d at 1166.

Here, the police legitimately seized the pickup-camper in question. It was parked illegally in the early hours of

the morning. Maier was alone without a valid driver's license, and no responsible person was available to remove the truck from the sidewalk.[3]

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[3]Although Maier argues that the police did not comply with requirements of the Minneapolis ordinances for an inventory search, and the magistrate made findings consistent with Maier's contention, we disagree with that conclusion. From our examination of the record, the undisputed facts demonstrate the police directed the impoundment of the vehicle and were in the process of preparing an impoundment inventory when one of the officers discovered $14,000 in currency. Police Officer Rognlie testified:

A. The party was asked to get out of the cab of the truck, and we told him that because his license was under suspension, we were not going to let him drive the vehicle away. It would be towed. I removed the keys from the ignition of the truck, taking off the keys to the truck and handing him back his keys so he could get into his house or apartment or whatever he was in.
Q. Okay. What happened after that?
A. He jumped back in the truck, and he began looking for his keys on the ring, and I told him I had the keys to the pickup truck, and he was not going to be able to drive the truck away, and he better start walking or find some transportation to get himself home, as he was not going to able to take the truck home with him.
Q. What was the reason for that?
A. Under suspension. No one else in the vehicle that I could see in the cab, and we couldn't let him drive it away while he was under suspension.
Q. Under suspension. You mean his driver's license was suspended?
A. That's right.
Q. What happened after that?
A. Finally the party got out of the truck and started walking eastbound on 46th Street, and I yelled to my partner who was in the truck to start the tow-sheet or impound report, and I went up to the cab of the truck to look over the contents of the cab which is normal police procedure to inventory any vaulable contents in the vehicle.
Q. Also a normal police procedure, is there a requirement of the police department to do this?
A. Yes, sir. In our manual it's required.
Q. Okay. Do you know why you have this impound procedure?
A. Well, the towing by the City of Minneapolis is done by two different towing companies that are under contract, and they park vehicles in different areas, and the contents may sometimes turn up missing, and that's why we inventory them for—basically for safekeeping so it's noted on the sheet that it was there.

Thus, the record demonstrates that the initiation of the search into the vehicle was in conformity with the usual practice for inventory searches of a vehicle to be impounded.

After the police officers began the inventory search of the cab of the pickup, one of the policemen discovered a large amount of currency in the cab. The officer investigated further and learned that Maier did not own the truck and denied any interest in the large sum of money discovered in the cab. An officer looked through the rear window of the camper and observed other items of personal property in the camper area.

Here, unlike *Wilson*, no reason existed to limit the inventory search to the passenger area of the vehicle. After discovering the large amount of money in the cab, and in light of the absence of the owner, the need under *Opperman* for a reasonable police procedure for "protection of the owner's property" justified police in examining and making an inventory of the entire vehicle, including the locked camper, to assure that any other valuable property would be recorded and kept safe.

A police officer is justified in assuming that valuable items of personal property are stored in the camper unit of a vehicle impounded by the police when the officer finds $14,000 in currency in a pouch on the front seat of the vehicle and can see through a window that the camper unit contains some items of personal property. An inventory search of a locked camper unit under such circumstances is therefore proper. A police officer continues to act reasonably, moreover, when, after becoming suspicious of the possible illegal nature of the contents of the camper during the inventory search, he stops his search and initiates procedures leading to the issuance of a proper search warrant.

Accordingly, we reverse and remand for further proceedings.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

United States of America,

Plaintiff,

v.

Jon Cary Maier,

Defendant.

Memorandum Order

3-81 Cr. 83

This matter comes before the court upon defendant's motion for suppression of evidence. Magistrate Brian P. Short was designated by the court under 28 U.S.C. § 636 (b) to conduct a hearing, receive evidence, and prepare proposed findings of fact and a recommendation regarding the disposition of the motion.

The action is now before the court upon the Magistrate's Report and Recommendation. Specifically, the Magistrate recommended that the court grant defendant's motion for an order suppressing the following items of physical evidence: seven bales of marijuana, two plastic bags of marijuana, numerous empty bags, road atlas, mortar and pestal, scale parts, and miscellaneous keys. The government has filed objections to the Magistrate's recommendation.

This court accepts the Magistrate's findings of fact, except as to finding No. 19. Finding No. 19 reads as follows:

> The officers then opened the locked rear door of the camper and opened the sealed opaque bags, finding a quantity of vegetable matter they believed to be unburned marijuana. However, the officers could not describe the smell or articulate why the smell they noticed was marijuana.

Magistrate's Report and Recommendation at 3. Based upon its *de novo* review pursuant to 28 U.S.C. § 636(b) (1), the court finds that the officers did not open the sealed opaque garbage bags, but simply squeezed one of the bags found in the camper portion of the vehicle. Thus, Finding of Fact No. 19 is modified to read:

> The officers then opened the locked rear door of the camper, squeezed one of the sealed opaque garbage bags found therein, and smelled what they believed to be unburned marijuana. However, the officers could not describe the smell or articulate why the smell they noticed was marijuana.

Based upon its independent determination of all issues of law arising from the Magistrate's report, the court accepts the Magistrate's recommendation to suppress the above-mentioned items of physical evidence. The initial intrusion into the enclosed camper of the pickup was an illegal inventory search under the decision of *United States v. Wilson*, 636 F.2d 1161 (8th Cir. 1980). In *Wilson*, the Eighth Circuit Court of Appeals held that "the routine search of a locked automobile trunk is unreasonable under the fourth amendment." 636 F.2d at 1165. This court, finding no facts in the present case to adequately distinguish it from *Wilson*, is therefore bound by the law of this circuit as set forth in *Wilson*.

It is the opinion of this couet that *South Dakota v. Opperman,* 428 U.S. 364, 376 (1976), would permit of an inventory search of a locked motor vehicle trunk and would also establish the reasonableness of a search such as the one occurring in this case. *Accord United States v. Martin,* 566 F.2d 1143 ((9th Cir. 1977), *United States v. Edwards,* 577 F.2d 883 (5th Cir.) (dictum). Such is not the view of the Court of Appeals of this circuit.

Accordingly,

IT IS ORDERED That the motion of defendant to suppress the physical evidence obtained as a result of search and seizure is granted, and such evidence is suppressed.

DATED: January 8, 1982.

/s/ Donald D. Alsop
United States District Judge

APPENDIX C

Report and Recommendation

CR 3-81-83

DANIEL W. SCHERMER, Esq., Assistant United States Attorney, for the United States.

MARC G. KURZMAN, Esq., for defendant.

Defendant is named in a one count indictment which charges that he possessed, with intent to distribute, approximately one hundred and ninety pounds of marijuana, in violation of 21 U.S.C. §841(a) (1). On September 28, 1981, defendant entered a plea of not guilty to the indictment. On October 5, 1981, defendant filed a motion to suppress certain physical evidence and a motion to dismiss the indictment. Those motions are the subject of this Report.

I. *Motion To Supress Evidence*

A hearing was held before the undersigned on October 26, 1981. Upon the evidence produced at the hearing and upon the post hearing briefs, the files and records herein, the court makes the following:

1. On September 10, 1981, at approximately 2:00 a.m. Minneapolis Police Officers Rognlie and Carey responded to a call to check a vehicle parked near 330 East 46th Street, Minneapolis, Minnesota.

2. When the officers arrived at 330 East 46th Street, they found defendant asleep in the drivers seat of a 1980 Chevrolet pickup truck, MN License No. YS41434. The box of this pickup was covered by a "topper."

3. The pickup was parked with its right wheels on the sidewalk.

4. In response to questions from the officers, defendant identified himself and gave his address and date of birth.

5. A driver's license check by Officer Carey disclosed that defendant's license was under suspension.

6. One of the officers determined that the vehicle was not stolen.

7. Officer Rognlie frisked defendant for weapons, found none and instructed him to leave the vehicle and walk home.

8. Defendant left the keys to the vehicle and walked away from the vehicle.

9. In view of all the facts-defendant's license was under suspension and he was the only person in the vehicle, the officers determined to impound the vehicle. However, the established Minneapolis Police Department procedures for impoundment of a vehicle were not followed.

10. Officer Rognlie entered and searched the unlocked cab compartment of the vehicle and found approximately $14,000 in currency.

11. After finding the currency, Officer Rognlie ran after the defendant and brought him back to the vehicle.

12. The defendant denied knowledge of the currency and stated that he had been using the truck, which was owned by a friend, for the previous five months.

13. Defendant was placed in the rear of a squad car while the officers requested a tow of the pickup.

14. The officers observed a plywood box or board in the locked camper portion of the vehicle about eighteen inches above the floor of the truck.

15. A number of sealed, opaque garbage bags were visable under the plywood board.

16. Officer Rognlie testified that he feared for his safety because of the possibility that a person was hiding underneath the board and behind the garbage bags. The officers had not seen anyone else around the truck. Further, the space underneath the plywood board was, at best, eighteen inches high.

17. The officers then unlocked and opened the window portion of the camper.

18. Upon opening the window, the officers testified that they detected the smell of what they believed was unburned marijuana.

19. The officers then opened the locked rear door of the camper and opened the sealed, opaque bags, finding a quantity of vegetable matter they believed to be unburned marijuana. However, the officers could not describe the smell or articulate why the smell they noticed was marijuana.

20. The officers returned to their squad car, advised defendant he was under arrest for "probable cause, narcotics," and called for a narcotics investigator.

21. When Sgt. John J. Boulger, a Minneapolis Narcotics Officer, arrived, Officers Rognlie and Carey told Boulger what they had found and how they came upon it.

22. Sgt. Boulger prepared an affidavit in support of an application for a search warrant based solely on the information received from Officers Rognlie and Carey.

23. A search warrant was issued by Hennepin County Municipal Court Judge Kenneth Gill, allowing a search of the truck and camper.

24. The search pursuant to the warrant disclosed the presence of a quantity of marijuana in the camper compartment of the vehicle.

25. Officer Rognlie's fear for his safety and the safety of his partner was not reasonable in light of the circumstances.

26. The officers' belief that they detected the smell of unburned marijuana was not reasonable.

REPORT

In the early morning of September 10, 1981, two Minneapolis police officers responded to a call to "check a slumper." The facts are outlined in the affidavit in support of the search warrant. The officers arrived at 330 East 46th Street and found defendant asleep in the cab of a 1980 Chevrolet pickup truck. The pickup was parked with its right wheels over the curb and near the sidewalk. The officers awoke defendant and requested identification. Defendant did not have any identification documents but told the officers his name and birth date. Record checks revealed that defendant's drivers license was suspended and that the pickup was not reported as missing or stolen.

The police searched defendant, found nothing, and told him that he would not be allowed to drive the pickup. The

officers took the keys to the pickup and defendant started to walk away from the scene.

The officers then started what was described as an inventory search of the cab portion of the vehicle. Officer Rognlie found an open pouch or purse containing a large quantity of currency. The officers called out to defendant and asked if he owned the purse. Defendant denied ownership of the purse and, when he was returned to the pickup, denied ownership of the currency.

Defendant was then detained in the officers' squad car and the officers continued their search. The box of the pickup was covered with what is known as a "topper." The locked topper was horizontally bisected by which was resting a box or board. about twelve to eighteen inches above the floor of the pickup box. The board was flush against the back of the cab and ran almost all the way to the tailgate of the truck. The entire enclosed area was locked and inaccessible from the cab or passenger portion of the pickup. Underneath the board, visible to the officers, were several opaque plastic garbage bags.

At the hearing, Officer Rognlie testified that he feared for his safety because of the possibility that a person could be hiding underneath the board and behind the bags. Even though several narrative reports of this search had been prepared, this testimony was the first time that safety concerns were mentioned. The officers fear for their safety does not appear in the officers' police reports or in the affidavit for the search warrant. Given the size of the area underneath the board, the fact that nothing unusual was observed during the course of the search, the defendant was not carrying any weapons and truck was not stolen, Officer Rognlie's fear for his safety was not reasonable.

Officer Rognlie also testified that he detected the odor of unburned marijuana when he opened the window portion of the camper. However, upon further examination, Officer Rognlie stated that he was unable to describe the smell and couldn't articulate how he was familiar with the smell of unburned marijuana, or even if it had a noticeable odor.

In the oral arguments and in the briefs, counsel have concentrated on the reasonableness of the intrusion into the locked camper portion of the vehicle. These arguments include discussion of warrantless inventory searches and warrantless searches for the purposes of insuring physical safety of the officers.

Defendant contends that the affidavit for the search warrant was based on information obtained by an illegal search. Defendant argues that because of this infirmity, the evidence seized pursuant to the warrant must be suppressed.

The Supreme Court has recognized the validity of inventory searches conducted without a warrant. *South Dakota v. Opperman*, 428 U.S. 364, 96 S.Ct. 3092 (1976). For a warrantless inventory search to be reasonable within the meaning of the Fourth Amendment, both the initial seizure and subsequent search of the vehicle must be legitimate. *United States v. Wilson*, 636 F.2d 1161 (8th Cir. 1980).

In *Wilson*, the Court of Appeals for the Eighth Circuit held that the routine inventory search of a locked automobile trunk is unreasonable under the Fourth Amendment. Here as in *Wilson*, the defendant was present and able to make arrangements to safeguard his property. The police also could have inventoried the locked camper compart-

ment as a single unit. The Court in *Wilson* held that because of the higher expectation of privacy in a locked trunk of an automobile, the warrantless inventory search was illegal. There is no reason to distinguish the expectation of privacy that surrounds a locked car trunk from the similar expectations in the locked box portion of defendant's pickup.

Officer Rognlie's asserted fear for his safety was unreasonable and therefore cannot serve as a basis for a special justification for the intrusion into the enclosed box of the pickup. While concern for safety can be a legitimate governmental interest that will justify a warrantless search, *Opperman, supra, Cooper v. California,* 386 U.S. 58 (1967), Officer Rognlie's fears in this case were not reasonable under the circumstances.

Further, the government contends that defendant does not have standing to object to the search of a vehicle that defendant admits is not his. This argument is without merit. It is clear that while defendant did not own the pickup, he had control over the vehicle and its keys. The requisite privacy interests of defendant in the pickup and its contents is sufficient to give him standing to object to the search. See *Raskas v. United States,* 439 U.S. 128 (1978) (Powell, J., concurring opinion).

However, even assuming that the intial intrusion into the enclosed box of the pickup was reasonable because of an inventory search or because of the officers' fear for their safety, the warrantless opening of the opaque plastic bags was in violation of the Fourth Amendment.

The Supreme Court, in *Robbins v. California,* 101 S. Ct. 2841 (1981), held the warrantless search of sealed plastic wrapped bundles was improper. The Court held

that the container in *Robbins* could not be opened without a warrant even when the container was found during the course of a valid automobile search.

In Robbins, the driver of a station wagon was stopped for driving erratically. During the ensuing search of the passenger compartment of the car the police smelled the odor of burned marijuana and found a vial of liquid and a quantity of marijuana. After putting the driver into the squad car, the police initiated a search of the rear of the station wagon, lifting the tailgate and opening a recessed luggage compartment. In the compartment they found two packages wrapped in green plastic. The police then opened the packages and found that each contained fifteen pounds of marijuana.

The Supreme Court held that the warrantless opening of the containers violated the Fourth and Fourteenth Amendments. The Court held that, absent valid exceptions, a closed opaque container may not be opened without a warrant.

The government in this case has not put forth any valid exception to this general rule. The opening of the bags was without a warrant.

Because the evidence obtained as a result of the opening of the bags was used as a basis for the search warrant, the fruits of the search pursuant to that warrant must be suppressed. *See, United States v. Crews,* 100 S.Ct. 1244 (1980). Attached as Exhibit A is an inventory of the evidence which the court recommends be suppressed.

II. *Motion To Dismiss Indictment*

Defendant argues that marijuana is classified as a Schedule I substance in the Federal Controlled Substance

Act (CSA), 21 U.S.C. §801 *et seq*, and that this classification is irrational and arbitrary in violation of the Fifth Amendment.

Even assuming *arguendo*, that the data defendant cites regarding marijuana is correct, the classification of marijuana as a Schedule I substance is not arbitrary or irrational.

Similar constitutional challenges to the classification of cocaine as a Schedule II substance have met with consistent failure in the courts. Numerous cases hold that Congress has the authority to regulate and classify drugs. *See, e.g., United States v. Stieren*, 608 F.2d at 1136. Given the broad authority of Congress and relationship between the societal policies Congress seeks to implement and the statute, there is a rational legislative purpose to the classification of marijuana as a Schedule I substance.

Based upon the foregoing,

IT IS RECOMMENDED that the court deny defendant's motion to dismiss the indictment and grant defendant's motion for an order suppressing certain physical evidence.

DATED: November 19, 1981.

/s/ Brian P. Short
United States Magistrate

Pursuant to Local Rule 14C(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties, within 10 days, a writing which specifically identifies those portions of this Report to which objection is made and the basis for that objection.

Exhibit A

Inventory

1. Seven Bales of marijuana
2. Two plastic bags of marijuana
3. Numerous empty bags
4. Road Atlas
5. Mortar and pestel
6. Scale parts
7. Miscellaneous keys